

HON. BENJAMIN H. SETTLE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON

NATHEN BARTON,

Plaintiff

v.

SERVE ALL, HELP ALL, INC.

Defendants.

Case No.: 3:21-cv-05338-BHS

RESPONSE TO BARTON’S MOTION
TO COMPEL; COUNTER MOTION
TO STRIKE AND FOR SANCTIONS

Noted for April 22, 2022

COMES NOW defendants/former Counterclaimants SERVE ALL, HELP ALL, INC.
 (“SAHA”) and respond to Plaintiff/former Counter defendant’s motion to compel as follows:

STATEMENT OF FACTS

On February 8, 2022 BARTON filed his Second Amended Complaint. See Dkt. 45.
SAHA filed an answer and a counterclaim on February 24, 2022. See Dkt. 46. BARTON did
not answer the counterclaim and rather, filed a motion to dismiss. On March 15, 2022 See
Dkt. 47 On April 1, 2022 I agreed that I should have sought leave of court prior to filing the
counterclaim, and did so through a response to that motion. See Dkt.48.

1 February 25, 2022, BARTON served a round of discovery requests to counterclaimant
2 SAHA and his 5th set of interrogatories to defendant SAHA. He served another request on
3 February 26, 2022 to defendant SAHA a sixth set of requests for admissions. And on
4 February 27, 2022, he served a second round of discovery requests for counterclaimant
5 SAHA, the second set of interrogatories, admissions and requests for production *See*
6 *Declaration of Donna Gibson*.

7 Counsel filed a notice of unavailability stating that I would be unavailable from
8 February 28, 2022 through March 15, 2022. See Dkt. 42 BARTON, having been informed
9 of counsel's unavailability was within days of those requests.. Not only that, he had not filed
10 a response to the Counterclaim, yet propounded discovery immediately upon the filing of the
11 counterclaim, on February 25, 2022. *See Declaration of Donna Gibson*.

12 Upon counsel's return from vacation, and actually prior to her return, BARTON was
13 up to his usual barrage of motions, not only in this case, but in another case pending in this
14 court where Mr. Barton is the plaintiff and the undersigned counsel represents the defendants
15 *Barton v. Delfgauw* 3:21-cv-05610-JRC. BARTON served additional discovery requests in
16 that matter on 03/14/2022, 03/20/2022, and 03/29/2022. He had also filed five motions in that
17 matter. *See Docket in that case, attached to Declaration of Donna Gibson*. In that case, the
18 court also ordered that Mr. Barton not issue a new round of discovery until he had received
19 responses to what was outstanding. He clearly did not follow that order, in issuing discovery
20 on 3/14, 3/20 and 3/29.
21

22 He has been drowning the parties in a mass of discovery requests, motions and lengthy
23 discovery conferences to the point where it is impossible to keep up.
24
25

1 Not only that, upon return from vacation, counsel had a bench trial scheduled in
2 Thruston County court for Monday, March 21, 2022 for which she was preparing even prior
3 to my return. That matter settled on the Friday prior to trial. *See declaration of Donna*
4 *Gibson.*

5 During the course of responding to discovery requests, information was disclosed that
6 would form the basis for amending their answer and counterclaim. Counsel reached out to
7 Mr. Barton in an attempt to stipulate to issues. The parties did not to come to a stipulation.

8 In the meantime, counsel needed to discuss the impact of this information with my
9 client, involving counsel and three person. Due to everyone's schedule, counsel was unable to
10 get a meeting set up prior to Mr. Barton's demands.

11 A discovery conference was for Friday April 1 at 10 a.m. However, on Wednesday
12 afternoon, March 30, counsel's mother fell at her assisted living facility and broke her wrist.
13 On Thursday, March 31 she was informed of the need to take her mother for a follow up
14 appointment at her doctor's office at 9 am. Mr. Barton was informed of that on March 31 and
15 asked if they could move the conference an hour. The parties agreed to do the conference via
16 email *See Declaration of Donna Gibson..*

17
18 The parties emailed back and forth regarding the issues. Counsel informed BARTON
19 via email that she needed to seek protection order/in camera review for some of the
20 documents that needed to be produced. She also agreed to dismiss the counterclaim during
21 that discourse and filed that via a response to the motion to dismiss at Docket 49.

22 After hours, over the weekend, BARTON emailed a deadline to respond by 5:00 pm
23 on Monday, April 4, 2022, thereby continuing the discovery conference. Counsel did not
24 read that email until Sunday evening April 3, 2022, after seeing the ECF referencing the filing
25

1 of BARTON's Motion to Compel. Counsel had a mediation scheduled on April 4 at 10 am
2 and two court hearings on April 4, one at 9 and one at 2 for which she was preparing
3 paperwork and clients.

4 This email request setting a deadline of April 4, 2022, evidences that meet and refer
5 requirement was still continuing up and through the end of April 4th. BARTON had also
6 agreed that the majority of the outstanding discovery was regarding the counterclaim, which
7 was being dismissed as evidenced in the response to his motion to dismiss, thus the majority
8 of the issues were resolved. Further, he had received redacted versions of the documents he
9 requested from defendants. *See Declaration of Donna Gibson.*

10 Upon inquiry, BARTON stated would be out of town without internet and he needed
11 to protect his interest and make sure his motion was filed so he filed it early. *See Declaration*
12 *of Donna Gibson.*

13 In BARTON's declaration in support of his motion, he falsely states at page 2 line 4 "I
14 have made all efforts to resolve the issues in the Motion in good faith." That is an incorrect
15 statement. As he states in his declaration, the parties conducted the discovery conference via
16 email.

17 BARTON has a habit of filing unnecessary motions that he later withdraws,
18 bombarding parties with discovery in a repetitive manner, misstating facts in his declarations
19 which counsel believes is purposely done to gain an advantage and waste counsel's time on
20 frivolous matters and then squawk when his deadlines are not met.

21 The parties are required to meet and confer pursuant to Civil Rule 26(i) prior to
22 moving to compel. That meet and confer conference was not completed prior to the filing of
23 this motion.
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1 He once again has filed a motion that is premature and defendants request that this
2 motion be stricken for being premature. Defendants request that this matter be stricken.

3 Further, since counsel has spent two hours preparing this response, defendants request
4 sanctions in the amount of \$600.00 to compensate them for their attorney's time.

5 Respectfully submitted this 6th day of April, 2022

6 s/Donna Gibson
7 Donna Gibson
8 Attorney for Defendants
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